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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/638,012	08/14/2000	Steven J. Moore	122995-72252	8813

7590 03/19/2010
Steven J Moore
17 Cobblestone Lane
Newtown, CT 06470

EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3725

MAIL DATE	DELIVERY MODE
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03/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/638,012	Applicant(s) MOORE, STEVEN J.	
	Examiner Bena Miller	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application is in condition for allowance except for the following formal matters:

A. A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

Where no assignee exists, applicant should affirmatively state that fact. This can be done by simply checking the "NO" box of item 7 of Form PTO/SB/50 (which form may be signed by the inventors, or by a registered practitioner). If the file record is silent as to the existence of an assignee, it will be presumed that an assignee does exist. See MPEP 1410.01(I). To cure this defect, applicant may use Form PTO/SB/53 which may be downloaded from the USPTO website.

B. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The Reissue Declaration filed 8/14/00 fails to properly identify at least one 35 U.S.C.251 error. The oath /declaration must specifically identify an error. See In re Constant, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir.), cert. denied, 484 U.S. 894 (1987). The reissue declaration of 8/14/00 merely stated that "The claims recite "means" language which may unreasonably limit the scope of the claims to less than the invention disclosed in the specification, as such invention would be understood by one of ordinary skill in the art. The term "means" was intended to be generic, but may not be read so given recent pronouncements by the Federal Circuit. This, and other word use

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thought to be generic, may have caused the patentee to have claimed less than the patentee had a right to claim. The patentee therefore has added new claims to more clearly reach the breadth of the invention, and to this extent, the claims are believed to be broadened.” Rather, any error in the application must be identified by reference to the specific paragraph and the specific priority claims of the prior applications wherein the error lies. The error statement given in the reissue oath or declaration of 8/14/00 with presentation of amendment to the patent claims would not be considered a sufficient “error” statement since applicant has not pointed out what the error is, only the “fixes” as shown in the amended claims. A new reissue declaration is required to clearly spell out what the error is with specific language from the claims or specification.

The Reissue Declaration filed 8/14/00 fails to comply with 37 CFR 1.63 because the declaration fails to state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to **patentability** as defined in § 1.56 as required by 37 CFR 1.63(b)(3). To cure this defect, applicant may use Form PTO/SB/51 which may be downloaded from the USPTO website.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed. A supplemental oath/declaration under 37 CFR 1.175(b)(1) is needed to cover errors corrected by amendments filed previously and up to date (added or deleted limitations in claims and added or deleted claims after filing the Declaration on 8/14/00). Form paragraph 14.05.02 may be used for this matter. To cure this defect, applicant

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may use Form PTO/SB/51S which maybe downloaded from the USPTO website. See MPEP § 1444 for handling supplemental oaths/declarations.

The reissue claims broaden the scope of the patented claims in at least one respect even though they are narrower in other respects. MPEP 1412.03(I). Therefore, the Supplemental Declaration must be signed by all inventors (not the assignee). MPEP 1414.01 (III). See also *In re Hayes*, 53 USPQ 2d 1222

An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bena Miller/
Primary Examiner, Art Unit 3725
March 15, 2010